

**STATEMENT OF CONSIDERATION
Relating to 803 KAR 25:091
(not amended after comments)**

(1) The public hearing on 803 KAR 25:091 scheduled for October 27, 2010, at 1:30 p.m. (EDT), at the Department of Workers' Claims, 657 Chamberlin Avenue, Frankfort, Kentucky, was held by Commissioner Dwight T. Lovan. No public comments were made at the hearing. However, two (2) written comments were received during the public comment period.

(2) The following persons were attendees or offered comment:

- (a) Jason Chambers, Kentucky Physical Therapy Association;
- (b) Holly Johnson, Kentucky Physical Therapy Association;
- (c) Veada Metcalf, Ladegast & Heffner;
- (d) Leigh Ann Thacker, Kentucky Physical Therapy Association; and

(3) The following persons from the administrative body were present or responded to comments:

- (a) Dwight T. Lovan, Commissioner;
- (b) Charles E. Lowther, General Counsel;
- (c) Lucretia Johnson, Director, Ombudsman/Workers' Compensation Specialists Services Division;
- (d) Derrick Hill, Supervisor, Technical Support Section;
- (e) Pam Knight, Supervisor, Medical Services Branch;
- (f) Candace Sacre, Office of General Counsel;
- (g) Shari Lafoe, Ombudsman/Workers' Compensation Specialists Services Division;
- (h) Lyn Roark, Ombudsman/Workers' Compensation Specialists Services Division;

- (i) Kelly Tharpe, Ombudsman/Workers' Compensation Specialists Services Division; and
- (j) Sherry Wilson, Ombudsman/Workers' Compensation Specialists Services Division.

SUMMARY OF COMMENTS AND RESPONSES

(1) SUBJECT MATTER: Ambulatory Surgery Center Cost-to-Charge Ratio

- (a) Veada Metcalf, Ladegast & Heffner Claims Services (L&H), submitted written comments on October 25, 2010, on behalf of L&H. Ms. Metcalf noted that there is an increase for Ambulatory Surgery Centers to a cost-to-charge ratio of 72 percent. Hospitals are capped at either 50 percent or 60 percent dependent upon various criteria. Ms. Metcalf proposed that the same cap of 50 percent or 60 percent be imposed on Ambulatory Surgery Centers.
- (b) Response: The Department of Workers' Claims has recommended the change for Ambulatory Surgical Center (ASC) cost-to-charge ratio to a maximum of 72 percent to correct a reduction under the previous schedule which went too far. ASC cost-to-charge ratio is tied to the cost-to-charge ratio for hospitals. Consequently, ASCs have no control over the basis for determining the cost-to-charge ratio. When the numbers were recalculated, it made no sense to place a cap on an ASC because the hospital (to which the ASC cost-to-charge ratio is tied) has a cap.
- (a) Veada Metcalf, Ladegast & Heffner Claims Services (L&H), submitted written comments on October 25, 2010, on behalf of L&H. Ms. Metcalf questioned why the Ambulatory Surgery Center cost-to-charge ratio was changed and no notification was given until the Emergency Regulation was filed.
- (b) Response: Lucretia Johnson, Director of the Division of Ombudsman/Workers' Compensation Specialists Services Division,

responded for the Department of Workers' Claims. Ms. Johnson pointed out that such information is provided on the department's web site at <http://www.labor.ky.gov/workersclaims>. Additionally, information can be provided via an email distribution list. Changes were made to regulations following comments from the medical community regarding the proposed changes. The changes were made in an effort to retain qualified physicians to provide treatment and to be fair in regard to the medical fees associated with workers' compensation.

- (a) Laxmaiah Manchikanti, M.D., on behalf of The Coalition of Surgery Centers of the Commonwealth of Kentucky, submitted written comments on October 21, 2010. Dr. Manchikanti expressed strong support for the changes and encouraged their final adoption without further amendment.
- (b) Response: The Department of Workers' Claims recognizes and appreciates and agrees with the comments of Dr. Manchikanti.

**SUMMARY OF STATEMENT OF CONSIDERATION AND ACTION TAKEN BY
THE PROMULGATING ADMINISTRATIVE BODY**

The public hearing was held and comments were solicited but none were given at the hearing. Two (2) written comments were received. The Department of Workers' Claims responded to the comments and will not be amending the administrative regulation.